Rosinah bt Nasry & Anor v Salahudin Hasanah & Ors

HIGH COURT (KOTA KINABALU) — NO S21–61 OF 2010
DAVID WONG J
16 DECEMBER 2011

Limitation — Land — Action for — Whether plaintiff's claim barred — Limitation Ordinance (Sabah Cap 72) s 3

Native Law and Custom — Land dispute — Native title — Jurisdiction of court — Whether Native Courts of Sabah had exclusive jurisdiction to determine and declare natives of Sabah

The claim in present suit arose out of dispute over the ownership of 44 parcels of lands in Latangon, Kinabatangan ('the lands'). The second and 45th defendants were successful applicants of the lands and they handed a full power of attorney ('PA') to the first defendant. Acting as an authorised agent, the first defendant then approached the 46th and 47th defendants. Through a sale and purchase agreement dated 16 September 1995, PA and substitution under PA ('substitute PA'), the 46th and 47th defendants bought the lands and the lands were transferred to them between 17 September 1996 and 7 March 1997. The lands were next subleased to the 48th defendant on 13 December 2000. The plaintiffs claimed that the second plaintiff had bought the lands from the land applicants. It was the plaintiffs' contention that the documents were forged as the applicants had never signed the PA and the first defendant had never signed the substitute PA and SPA. Counsel for the 46th, 47th and 48th defendants submitted to the court the police report drafted by the second plaintiff and made by the first defendant on 30 November 2006. It was therefore alleged that the plaintiffs had knowledge of the forgeries on 30 November 2006, the date of the police report or on 30 August 2007, the date of a sworn affidavit by the second plaintiff. Based on the two dates, it was submitted that the plaintiffs' claim was time barred as the writ in the present suit was filed on 23 September 2010 which was outside the three year limitation period irrespective of the dates being either 30 November 2006 or 30 August 2007. The two issues to be determined by the court were whether the native courts of Sabah had the exclusive jurisdiction under s 3(2) of the Interpretation (Definition of Native) Ordinance (Cap 64) ('Ordinance') to determine and declare the 46th and 47th defendants were natives of Sabah and whether the plaintiffs' claim was barred by items 73 and 74 of s 3 or otherwise of Limitation Ordinance (Sabah Cap 72).

Held dismissing the plaintiffs' claim with costs:

(1) The jurisdiction in so far as native certificates are concerned belonged

exclusively to the native court and not this court. The intention of the Legislature, under s 3 of the Ordinance and Part IV of the Native Courts Enactment 1992, revision and appeal was clear. Rights flowing from native certificates were from a statute and not from common law like native customary rights. That statute was the ordinance. Since there was a statutory remedy for their enforcement in the native court, this court's jurisdiction was ousted. When the right to be enforced was a right created by statutory right and when there was a statutory remedy provided by the enforcement, the court's original jurisdiction was ousted. If the right sought to be enforced was a common law right and even if there was a statutory remedy for its enforcement, the court's original jurisdiction remained intact. Rights emanating from a native certificate did not exist at common law and they owed their existence to a statute (see paras 10–12).

(2) The court agreed with learned counsel for the 46th, 47th and 48th defendants that the allegations of forgeries were never pleaded and should be ignored. There was no evidence of any active concealment by the 46th and 47th defendants (see para 20).

(3) The plaintiff's claims were statute barred. The plaintiffs made a clear admission in their own pleading that they knew of the forgery in November 2006. It was also admitted that they knew the importance of the filing of the suit within the limitation period but the plaintiffs had filed this instant suit only on 23 September 2010. It would be repugnant to common sense to sustain the contention that the knowledge of the alleged forgeries had not been perfected (see paras 25–27).

[Bahasa Malaysia summary

Tuntutan dalam tindakan ini timbul akibat pertikaian ke atas pemilikan 44 bidang tanah di Latangon, Kinabatangan ('tanah-tanah'). Defendan-defendan kedua dan ke-45 adalah pemohon-pemohon tanah-tanah tersebut yang berjaya dan mereka menyerahkan surat kuasa wakil ('PA') kepada defendan pertama. Bertindak sebagai ejen yang diberi kuasa, defendan pertama kemudian menghampiri defendan-defendan ke-46 dan ke-47. Melalui perjanjian jual beli bertarikh 16 September 1995, PA dan penggantian di bawah PA ('penggantian PA'), defendan-defendan ke-46 dan ke-47 membeli tanah-tanah tersebut dan tanah-tanah tersebut dipindah milik kepada mereka antara 17 September 1996 dan 7 Mac 1997. Tanah-tanah tersebut seterusnya dipajak kepada defendan ke-48 pada 13 Disember 2000. Plaintif-plaintif mendakwa bahawa plaintif kedua telah membeli tanah-tanah tersebut daripada pemohon-pemohon tanah. Adalah hujahan plaintif bahawa dokumen-dokumen tersebut telah dipalsukan kerana pemohon tidak pernah menandatangani PA dan defendan pertama tidak pernah menandatangani penggantian PA dan SPA. Peguam defendan-defendan ke-46, ke-47 dan 48 yang dikemukakan kepada mahkamah laporan polis didraf oleh plaintif kedua dan dibuat oleh defendan

pertama pada 30 November 2006. Oleh itu adalah dihujahkan bahawa plaintif mempunyai pengetahuan pemalsuan pada 30 November 2006, tarikh laporan polis atau pada 30 Ogos 2007, tarikh afidavit bersumpah oleh plaintif kedua. Berdasarkan kedua-dua tarikh tersebut, dihujahkan bahawa tuntutan plaintif dihadkan oleh masa kerana writ saman dalam tindakan ini telah difailkan pada 23 September 2010 yang berada di luar tempoh had masa tiga tahun tanpa mengira tarikh sama ada 30 November 2006 atau 30 Ogos 2007. Dua isu yang perlu diputuskan oleh mahkamah adalah sama ada mahkamah anak negeri Sabah mempunyai bidang kuasa eksklusif di bawah Interpretation (Definition of Native) Ordinance (Cap 64) ('Ordinance') untuk menentukan dan mengisytiharkan ke-46 dan defendan 47 adalah anak negeri Sabah dan sama ada tuntutan plaintif telah dihalang oleh perkara 73 dan 74 di bawah s 3 atau sebaliknya dalam Limitation Ordinance (Sabah Cap 72).

Diputuskan menolak tuntutan plaintif-plaintif dengan kos:

(1) Bidang kuasa setakat mana sijil anak negeri berkenaan adalah secara eksklusifnya milik mahkamah anak negeri dan bukan mahkamah ini. Niat badan perundangan, di bawah s 3 Ordinan dan Bahagian IV Native Courts Enactment 1992, Revision and Appeal adalah jelas. Hak-hak yang timbul daripada sijil anak negeri adalah daripada statut dan bukan daripada undang-undang biasa seperti hak-hak adat. Statut adalah Ordinan tersebut. Memandangkan terdapatnya remedi statutori bagi penguatkuasaan mereka di mahkamah anak negeri, bidang kuasa mahkamah ini diketepikan. Apabila hak yang boleh dikuatkuasakan merupakan hak yang dicipta oleh hak berkanun dan apabila terdapat remedi statutori oleh penguatkuasaan, bidang kuasa asal mahkamah diketepikan. Jika hak yang hendak dikuatkuasakan adalah hak *common law* dan walaupun terdapat remedi statutori bagi penguatkuasaan, bidang kuasa asal mahkamah kekal utuh. Hak-hak yang berpunca daripada sijil anak negeri tidak wujud pada undang-undang biasa dan mereka berhutang kewujudan mereka kepada statut (lihat perenggan 10–12).

(2) Mahkamah bersetuju dengan peguam untuk defendan ke-46, ke-47 dan ke-48 bahawa tuduhan pemalsuan tidak pernah diplidkan dan patut diabaikan. Tiada bukti penyembunyian giat oleh defendan ke-46 dan ke-47 (lihat perenggan 20).

(3) Tuntutan plaintif dihalang oleh had masa. Plaintif-plaintif telah dengan jelas membuat satu pengakuan dalam pliding mereka sendiri bahawa mereka mengetahui akan pemalsuan pada bulan November 2006. Ia juga diperakui bahawa mereka mengetahui kepentingan memfailkan saman tersebut dalam tempoh had tetapi plaintif telah memfailkan tindakan ini hanya pada 23 September 2010. Adalah bertentangan dengan dengan

akal untuk mengekalkan hujahan bahawa pengetahuan pemalsuan tersebut belum lagi disempurnakan (lihat perenggan 25–27).]

Notes

For a case on action for land, see 9 *Mallal's Digest* (4th Ed, 2010 Reissue) para 2284.

For cases on native title, see 101 *Mallal's Diegst* (4th Ed, 2011 Reissue) paras 717–721.

Cases referred to

Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim [2011] 4 MLJ 346; [2009] 2 CLJ 121, CA (refd)

Hassnar bin MP Ebrahim @ Asainar v Tapah bin Utong & Ors (Suit No S-22–07 of 1999, unreported), HC (refd)

Hon Chung Lip v Kwan Ngen Wah & 6 others [2012] MLJU 81, CA (refd)

Pyx Granite Co Ltd v Ministry of Housing and Local Government and Others [1960] AC 260, HL (refd)

Legislation referred to

Interpretation (Definition of Native) Ordinance (Cap 64) s 3(2)

Limitation Ordinance (Sabah Cap 72) s 3, Items 73, 74

Rules of the High Court 1980 O 14A

Ansari Abdullah (Ansari & Co) for the plaintiff.

Rizwandean Bukhari M Borhan (Rahim Abdullah & Co) for the first defendant.

Jonathan Yasin (John-Lynn Advocates) for the second, 38th and 39th defendants.

Frederick Chang (Chang & Kamaruddin) for the 46th, 47th and 48 defendants.

Christopher Chang (Lind Willie Wong & Chin) for the 50th defendant.

David Wong J:

PROCEEDING

[1] The plaintiffs' claims in short are these:

(a) that the second plaintiff is the beneficial and legal owner of 44 parcels of land as from July 1976;

(b) the power of attorney given to the first defendant by the land applicants (the second to 45th defendants) of the 44 parcels of lands (PA) and substitute PA, all consequential acts made or purported to be made or carried out in pursuant to the PA and substitute PA, the acceptance and registration of the draft titles, the transfer of ownership and sublease of the said land, are null and void and of no legal effect; and

(c) that the 46th and 47th defendants are not natives of the State of Sabah.

BACKGROUND FACTS

[2] The dispute between the parties here concerns the ownership of 44 parcels of lands situated at Latangon in the district of Kinabatangan ('the lands'). The second to 45th defendants were the successful applicants of the lands and they had purportedly given a full power of attorney to the first defendant to deal with them including disposing of the same. The 46th to 47th defendants were approached by the first defendant acting as the authorised agent or attorney of the land applicants as to whether they wish to purchase the lands. The 46th and 47th defendants decided and agreed to buy the lands in 1995 pursuant to a set of power of attorney (PA), substitution under a power of attorney (substitute PA) and a sale and purchase agreement ('SNP') all dated 6 September 1995. The lands were transferred to the 46th and 47th defendants between 17 September 1996 and 7 March 1997. On 13 December 2000 the lands were subleased to the 48th defendant.

[3] As for the plaintiffs, their case is that between 1978 and 1985 the land applicants had sold the lands to the second plaintiff at the price of RM2,000 per lot (15 acres per lot) and the land applicants had received full payment of the purchase price. The plaintiffs also claim that the PA was never signed by the land applicants and the substitute PA and SNP were never signed by the first defendant. In essence they are alleging that those documents are forged.

[4] After the oral evidence of the second plaintiff, the 46th, 47th and 48th defendants took out encl 132 pursuant to O 14A requesting the court to determine the following two issues:

(a) whether the exclusive jurisdiction to determine and declare whether the 46th and 47th defendants are natives of Sabah lies with the native courts of Sabah under s 3(2) of the Interpretation (Definition of Native) Ordinance, Cap 64; and

(b) whether the plaintiffs' claim is barred by items 73 and 74 of s 3 or otherwise under the Limitation Ordinance (Sabah Cap 72)?

[5] After hearing submissions from counsel I allow the application of the 46th, 47th and 48th defendants and directed counsel to submit on the two issues.

[6] Having heard those submissions, I now give my grounds of decision in respect of the two issues.

FIRST ISSUE

Whether the exclusive jurisdiction to determine and declare whether the 46th and 47th defendants are natives of Sabah lies with the native courts of Sabah under s \ 3(2) of the Interpretation (Definition of Native) Ordinance, Cap 64?

[7] Mr Ansari, to his credit, in his oral submission conceded that, in view of the recent Court of Appeal decision in *Hon Chung Lip v Kwan Ngen Wah & 6 others* [2012] MLJU 81 — case Appeal No 02–99 of 2009, the jurisdiction in so far as native certificates are concerned belongs exclusively to the native court and not this court. In my view the intention of the Legislature is clear and this can be seen in the following piece of legislation:

Section 3 of the Interpretation (Definition of Native) Ordinance (Cap 64):

3

(1) Any person claiming to be a native may apply to a Native Court established under the Native Court Enactment 1992 and having jurisdiction in the area in which such person resides to declare:

(a) that such person is recognized by native law and custom as the parent or child, as the case maybe, of any person; or

(b) that such a person is a member of a native community, has so lived during any state period, and while so living has borne a good character; or

(c) that such person is a member of a people named in paragraphs (c) or (d) of subsection (1) of section (2); or

(d) that a parent of such person is or was a member of a people named in paragraph

(e) of subsection (1) of section (2) and living, or if deceased is buried or reputed to be buried in Sabah.

(2) Subject to provision of subsection (3) of this section, any Native Court referred to in subsection (1) to whom an application is properly made under such subsection shall have exclusive jurisdiction to entertain and determine any such application and to make such declaration as the case requires.

(3) Any decision of any Native Court made in the exercise of the jurisdiction conferred upon it by subsection (2) shall be subject to review and scrutiny by, and appeal to the Native Court.

(4) The final decision on any application made under subsection (1) shall be conclusive evidence for all purposes in respect of matter or matters to which it relates.

Native Courts Enactment, 1992. Part IV Revision and Appeal

16 Power of revision.

16

(1) All proceedings of every Native Court shall be subject to revision by the District native Court which, if it considers that such proceedings are irregular, improper or unconscionable, may quash or vary the same or direct a rehearing."

(2) A District Native Court may call for and examine the record of proceedings of a Native Court for the purpose of satisfying itself as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceedings of such court.

17 Appeal to District Native Court

17(1) An appeal shall lie from any order of Native Court to the District Native Court in the district in which such Native Court is established.

18 Appeal to Native Court of Appeal.

18(1) An Appeal shall lie from any order of the District Native Court to the Native Court of Appeal.

[8] The conduct of the second plaintiff in filing an application at the Native Court of Appeal, Kota Kinabalu seeking for a review of the native certificates of the 46 and 47th defendants on 30 August 2007 speaks for itself. As pointed out by counsel for the 46th and 47th defendants, their native certificates issued by the native court is conclusive evidence that they are natives of Sabah in this proceeding. Case law on this issue is also crystal clear. In fact more than a decade ago, the present Chief Judge of Sabah and Sarawak, then as a High Court judge Richard Malanjum J in *Hassnar bin MP Ebrahim @ Asainar v Tapah bin Utong & Ors* (Suit No S-22–07 of 1999) made this observation on the challenge of the status of a native certificate:

> With respect I do not think that this court is the proper forum to check on the matter. To do so would entail the hearing of evidence pertaining to the issuance of the certificate. This present suit was not tailored in that direction. Moreover I am of the view that s 114(e) of the Evidence Act 1950 is applicable.

[9] That observation, in my view, should and has remained the correct approach in dealing with challenges to the validity of native certificates.

NATIVE CERTIFICATES' RIGHTS – COMMON LAW OR STATUTORY RIGHTS

[10] There is another reason for my decision and it relates to the nature of the rights in a native certificate issued by the native court. It is my view that rights flowing from native certificates are purely statutory rights as their existence stems from a statute and not from common law like native customary rights. That statute is the Interpretation (Definition of Native) Ordinance (Cap 64). The significance of this distinction can be gathered from the case of *Pyx Granite Co Ltd v Ministry of Housing and Local Government and Others* [1960] AC 260. In that case, the plaintiff company had claimed for a declaration that the development which they proposed to carry out on their freehold and licensed land was authorised by a certain Act and hence two ministerial decisions in 1947 and 1953 refusing them permission to develop were of no effect. The defendant/local council raised a preliminary objection that in view of the existence of provisions in the 1947 Act providing that if any person proposes to carry out any development of its land and wishes to have it determined, it may apply to the local planning authority to have it determined, the plaintiff is barred from seeking remedy in court. The House of Lords in dealing with the preliminary objection discuss the significance of a common law right and a statutory right. Lord Jenkins puts it as thus:

> Where a statute creates a new right which has no existence apart from the statute creating it, and the statute creating the right at the same time prescribes a particular method of enforcing it, then, in the words of Lord Watson in *Barraclough v Brown*, 'the right and the remedy are given unoflatu, and the one cannot be disassociated from the other'. As Lord Herschell put it in the same case, the party asserting the right cannot 'claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right' if A has a right founded entirely upon particular statute to recover a sum of money from B, and the statute goes to provide that the sum in question may be recovered in proceedings of a particular kind, then it is wholly reasonable to impute to the legislature an intention that the sum in question, recoverable solely by virtue of the statute, should be recoverable in proceedings of the kind provided by the statute and not otherwise.

[11] The principle distilled from the law Lords is this. If the right sought to be enforced is a right created by statute (statutory right) and when there is a statutory remedy provided for its enforcement, the court's original jurisdiction is ousted. If however the right sought to be enforced is a common law right and even though there is a statutory remedy provided for its enforcement, the court's original jurisdiction remains intact.

[12] Reverting to rights emanating from a native certificate and as held by me earlier, these rights not existing at common law owed their existence to a statute and as such where there is a statutory remedy for their enforcement in the native court, this court's jurisdiction is ousted.

[13] This interpretation by me is nothing more or less than a mere implementation of the intention of Parliament. To restate the obvious, courts only apply the law and when there is clear intention of Parliament as there is here, I must apply the law.

[14] Accordingly I order that no evidence on the status of the native certificates of the 46th and 47th defendants is to be adduced in this trial.

SECOND ISSUE

Whether the plaintiffs' claim is barred by Items 73 and 74 of s 3 or otherwise under the Limitation Ordinance (Sabah Cap 72)?

[15] In my view, it is undisputed that the plaintiffs' claim is premised on the allegation of forgery in that the PA, substitute PA and SNP were not signed by the land applicants and/or the first defendant. It is also undisputed that the time starts to run from the date when the alleged forgeries become known to the plaintiffs and the period of limitation is three years, the applicable items are Items 73 and 74 of the Sabah Limitation Ordinance (Cap 72) which state as follows:

> Item 73 To cancel or set aside an instrument not otherwise provided for, time (3 years), beings to run when the facts entitling the plaintiff to have the instrument cancelled or set aside becomes known to him.
>
> Item 74 To declare the forgery of an instrument issued or registered, time (3 years), begins to run when the issue or registration becomes known to the plaintiff.

[16] Counsel for the 46th, 47th and 48th defendants premised their submission on the police report made on 30 November 2006 by the first defendant. For clarity, I produce the report herein:

A

B

C

D

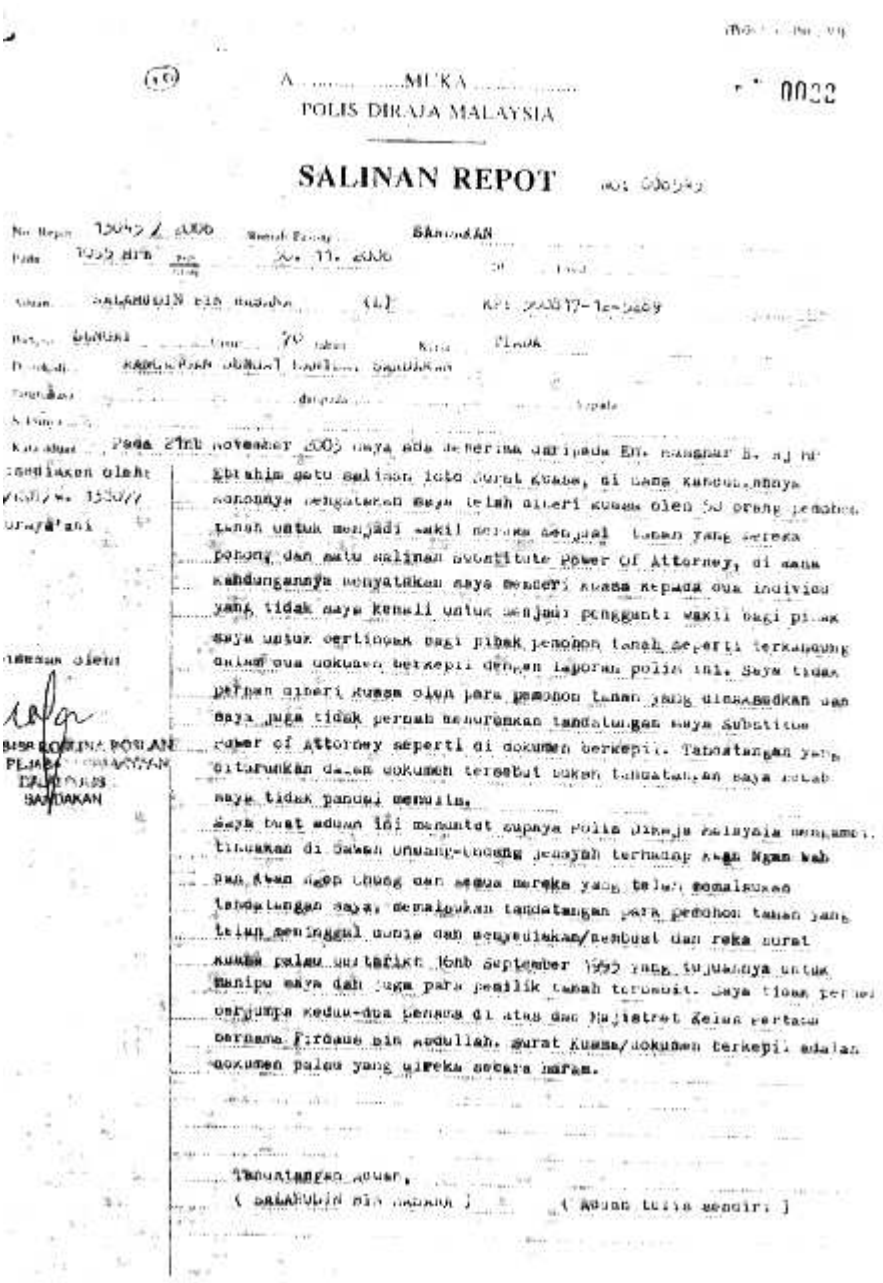
E

F

G

H

I



(6) A ..... MUKA .....

POLIS DIRAJA MALAYSIA

0022

SALINAN REPOT

Pada 21hb November 2006 saya ada menerima daripada En. Mansor b. Aji Ibrahim satu salinan foto surat kuasa, di mana kandungannya menyatakan saya telah diberi kuasa oleh 50 orang penduduk tanah untuk menjadi wakil mereka menjual tanah yang mereka pohon, dan satu salinan asal Power of Attorney, di mana kandungannya menyatakan saya memberi kuasa kepada dua individu yang tidak saya kenali untuk menjadi penggantu wakil bagi pihak saya untuk pertimbangkan bagi pihak pemohon tanah seperti terkandung dalam dua dokumen bersekali dengan laporan polis ini. Saya tidak pernah diberi kuasa oleh para pemohon tanah yang dimaksudkan dan saya juga tidak pernah menurunkan tandatangan saya Substitute Power of Attorney seperti di dokumen berkepil. Tandatangan yang ditunjukkan dalam dokumen tersebut bukan tandatangan saya tetapi saya tidak pandai menulis.

Saya buat aduan ini menuntut supaya Polis Diraja Malaysia menyiasat tindakan di bawah undang-undang jenayah terhadap kesalahan pemalsuan tandatangan saya, memalsukan tandatangan para pemohon tanah yang telah meninggal dunia dan menyediakan/membuat dan reka surat kuasa palsu bertarikh 10hb September 1993 yang tujuannya untuk menipu saya dan juga para pemilik tanah tersebut. Saya tidak percaya kedua-dua perkara di atas dan Majistret dalam perkara pertama bernama Firdaus bin Abdullah. Surat kuasa/dokumen terkepil adalah dokumen palsu yang direka secara haram.

Tandatangan aduan,

(SALAHUDIN BIN HASAN) (Aduan tulis sendiri)

[17] It is undisputed that the police report was drafted by the second plaintiff. Hence it is the submission of the 46th, 47th and 48th defendants that the plaintiffs had knowledge of the alleged forgeries on 30 November 2006 or

latest on 30 August 2007. The former date is the date of the police report while the latter date refers to an affidavit sworn by the second plaintiff on 30 August 2007 and for completeness I reproduce paras 3–4 of the same (at pp 51– 52 of exh B) as translated into English by counsel for the 46th, 47th and 48th defendants:

> 3. My investigations show that Kwan Ngen Chung and Kwan Ngen Wah, the accused in this action, had created, prepared thereof and used one Power of Attorney that they had forged with the intention to cheat me as well as the original land owners.
>
> PARTICULARS OF FRAUD
>
> Kwan Ngen Chung together with Kwan Ngen Wah, without the knowledge of several land applicants which have been approved to have the ownership of a piece of land situated at Latangon, in the district of Kinabatangan, have prepared, did and or created a fake power of attorney by using the name of the said land applicants (Landowners).
>
> The content of the fake power of attorney is that the landowners have appointed and authorized one of my family members namely SALAHUDIN BIN HASANAH to be the representative of the Landowners to sell their approved land.
>
> Further, Kwan Ngen Chung and Kwan Ngen Wah have prepared, did and or created another fake power of attorney where SALAHUDIN BIN HASANAH has appointed both of them to be the representative of the landowners to sell and transfer their approved land.
>
> After the fraud was exposed and detected in November 2006, Ebnu Bin Etin as the representative of the Landowners and SALAHUDIN BIN HASANAH, the two victims of deceit by Kwan Ngen Chung and Kwan Ngen Wah claiming that their names had been misused without their knowledge had lodged a police report at the Sandakan Police Station so that criminal prosecution is taken against Kwan Ngen Chung and Kwan Ngen Wah for forging their signatures.
>
> A copy of the police report regarding the use of the forged power of attorney by Mr Ebnu Bin Etin and Mr Salahudin Bin Hasana are hereby exhibited marked as 'HAS-1' and 'HAS-2'.
>
> 4. My investigations reveal that Kwan Ngen Chung and Kwan Ngen Wah have successfully transferred my land under the terms of Native Title (NT) using the Native Certificates purportedly issued by the Native Court at Kota Kinabalu via orders to Suit No. 243/79 (B) and (D).
>
> Photocopy of the native certificate purportedly issued to the names Kwan Ngen Chung and Kwan Ngen Wah by the Native Court at Kota Kinabalu are hereby exhibited marked as 'HAS-3' and 'HAS-4'.

[18] Relying on those two dates, it is submitted that the plaintiffs' claim is time barred because the writ in this suit was filed on 23 September 2010 which is outside the three year limitation period whether one takes the knowledge date to be either 30 November 2006 or 30 August 2007.

[19] Those pivotal dates are not disputed by the plaintiffs as can be seen from their opening speech and pleadings. What is disputed and contended by the plaintiffs is twofold and they are these. First when the police report was made, it was a mere suspicion by the plaintiffs or in the words of counsel, knowledge of the alleged forgeries had not been perfected. Second there has been concealment by the 46th and 47th defendants of the alleged forgeries and it was only recently that these alleged forgeries had been discovered. As such the limitation period did not start on the two dates mentioned above.

CONCEALMENT OF THE FORGERIES

[20] With respect, I agree with counsel for the 46th, 47th and 48th defendants that this allegation was never pleaded and should be ignored by the court. Be that as it may, I shall deal with it. Firstly let me say that there is no evidence of any active concealment by the 46th and 47th defendants, in fact I can't see how there could be any concealment where dealings of the lands are public records of the Lands and Surveys Department. In any event, if the plaintiffs had a problem with the Lands and Surveys Department, they could have sought remedy from the courts. Let me say here that from his very own testimony in court the second plaintiff is a well educated person with a wealth of knowledge of politics deriving from his active participation in politics during his university days and his foray into state politics as a member of local political party. His knowledge and friendship with many ministers of yesteryears also gave him intimate knowledge of the workings of government departments. Hence with that wealth of knowledge, this court can safely presume he is fully aware of his rights. In any event, in the case of *Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121, the court through the judgment of Gopal Sri Ram JCA (as he then was) held that there is a duty to exercise due diligence in ascertaining the alleged breach in the context of the limitation statute. This is how His Lordship puts it:

> The plaintiff's argument that he was unaware of the identity of the person who had defamed him and could not therefore institute proceedings within the three limitation period is equally without merit. Upon his arrest he could have applied for and obtained from the police a copy of the first information report in the case. From it he could have quite readily ascertained that it was the defendant who had libelled him. The instant plaintiff did not therefore act with reasonable diligence in ascertaining the defendant's identity within the prescribed limitation period It may be added that, absent fraud on the part of the defendant, it is no answer to a plea of limitation for a plaintiff to say that he was unaware that he had a cause of action during the relevant period prescribed by the statute. See *Ardikappa v Kadappa* [1916] 36 IC 418; *Lalta Singh v Muthur Upadhia* ILR 6 Luck 374. That principle, in my judgment, applies with full force to the facts of the present instance.

[21] There is no reason that a man of the second plaintiffs stature through due diligence could not have uncovered whatever forgeries which the 46th and 47th defendants were concealing.

[22] For reasons stated above, I reject this contention.

KNOWLEDGE OF ALLEGED FORGERIES NOT PERFECTED

[23] This contention to say the least is novel. But be that as it may, I will examine it in the context of the pleadings and evidence tendered in court thus far. I start off with the police report dated 30 November 2006 which by his admission was drafted by the second plaintiff. Even at a casual glance of the report, it is full in details. It talks of the PA by the land applicants to the first defendant, the substitute PA and the allegation that the signatures therein are forged. More importantly, the report refers to the 46th and 47th defendants by their names and refers to 'surat kuasa palsu bertarikh 16.9.1995' (translated false power of attorney). With respect, what is stated in the police report is more than 'suspicion'. What is contained in the police report is replicated in paras 3–4 of the second plaintiff on 30 August 2007 which has been reproduced earlier. There is also the second police report made by the 38th defendant on 22 June 2007 (p 55 of exh B) also alleging that the he had never donated any power of attorney to the first defendant and that the 46th and 47th defendants as the mastermind behind the alleged forgeries. The second plaintiff had also requested for a collector's caveat on lands as evidenced in his solicitors' letter dated 9 July 2007 (pp 30–33 exh B).

[24] Finally I refer to the plaintiffs' own pleading at p 60 of the bundle of pleading which is reply to the defence of the 46th–48th defendants and this is what it states:

> 10.2 that Police report were only made on the 30th day of November 2006 because the transfer of the said land through utilization of forged documents was only discovered in November 2006. Prior to this action an application to the Native Court of Appeal has been filed on the 30th day of August 2007. The allegation that this action was time barred as it was filed on the *23rd of November 2009* is misconceived. (Emphasis added.)

[25] This paragraph speaks volume and it is this. This is a clear admission by the plaintiffs that they knew of the forgery in November 2006. It is also a clear admission that they knew the importance of the filing of the suit within the limitation period. What has happened is that the plaintiffs did not file this suit on the 23 November 2009 as contained in para 10.2 but had filed only on 23 September 2010.

[26] With what I have set out above, it would be repugnant to common sense to sustain the contention that the knowledge of the alleged forgeries has not been perfected.

[27] Accordingly the plaintiffs' claims are statute barred.

[28] In view of my conclusion and pursuant to s 3 of the Sabah Limitation Ordinance, the plaintiffs' claim against the 46th to 48th defendants are dismissed with costs in the sum of RM70,000.

Plaintiffs' claim dismissed with costs.

Reported by Ibnu Aswan